

JERSEY / JUDGMENT

W v O [2005] JRC 017A (14 February 2005)

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judgment

Solicitor P W Syvret for the Petitioner. Advocate R E Colley for the second Plaintiff. the Registrar:

1. I have been asked to give reasons for my ruling on the matter of costs in a case where a father, who pays maintenance for his two children, was successful in his application to reduce the maintenance from £225 per child per month to £156 per child per month. The substantive hearing took place on 14 th December 2004 and the costs hearing on 25 th April 2005. 2. The parties were divorced in 2001. In July of that year the divorce was made absolute. At the same time, an agreement was ratified, setting out the rate of maintenance payable at that time. 3. The summons to reduce the maintenance was filed on 17 th June, 2004, when directions were made with regard to the necessary disclosure required by both parties. 4. A further order for disclosure was made on 13 th September 2004. The order referred to property which the father had acquired in France. 5. Yet another order was made on 26 th October, 2004 when the wife's lawyer attempted to fix a date for a hearing to strike out the summons to reduce the maintenance. No such date was fixed and no costs order was made. However, a debate did take place on the subject of costs and directions were made for the husband to make further disclosure. 6. The wife's lawyer maintains that the wife was entitled to a costs order as a result of the husband's failure to make full disclosure, that is, the costs incurred in relation both to the hearing on 26 th October (on an indemnity basis) and generally. 7. The husband's advocate maintains that the husband is entitled to a costs order based on the fact that he was successful in the substantive action to reduce the maintenance. 8. I was told that husband's costs amount to a staggering £32,442, the wife's to the sum of £4,000. 9. There were open offers submitted by both sides prior to the hearing. The husband would have accepted £145 per child, the wife would have accepted £195 per child, as opposed to the £156 finally ordered. The husband's offer was indeed closer to the final result. 10. The case opens up the whole question about whether or not the Court should or should not, as a general rule, make orders for costs in family cases. Parties in family cases often rely on free (or partly free) legal aid. Should it make any difference that one party, and not the other, has legal aid? 11. I have always felt that it is not normally appropriate for costs orders to be made in child maintenance cases, especially since the most likely recipient of a costs order is the payer of the maintenance. Any award for costs made against the payer is likely to make it harder for the payer to observe the maintenance order and is unlikely to benefit the child. Particularly in cases where the carer of the child(ren) is assisted by legal aid, the only beneficiary is likely to be the carer's lawyer. 12. In this case, much effort was made by the wife's (the carer's) lawyer to obtain details of

the husband's property investment in France. It was admitted by him that the acquisition of the property was beyond his means and had resulted in him having to accept financial assistance from his father, in whose Jersey property he now lives, with his second wife and their twin children. 13. However, the Court concluded that the French property acquisition was not the only deciding factor in the case. 14. It would not have been possible to come to this conclusion without certain information about the property, for example how much it cost to acquire, how much it costs to run, the income from it and how much its likely value is now. 15. On 26 th October, 2004 I felt that the husband had been slow to reveal such details as had been previously ordered for him to disclose. So does this justify the making of a costs order now? 16. Looked at in the round, I think not. In the first place, the French property was shown to be of little relevance to the case. 17. Secondly, there were other matters, upon which I accepted the husband's argument, for example the relevance of the needs of his second family and the time spent by the children with him. 18. Thirdly it would be unjust to penalise the husband with a costs order, when it was he who, on balance, was successful in his application to reduce the maintenance. 19. Should I, then, consider a costs order in the husband's favour? 20. In this case it is the husband who is legally aided. In effect, a costs order would not be likely to benefit him, but would be likely to benefit his lawyer. If the wife, who has care of the children, is obliged to pay costs, she would find it especially hard, if told to pay the huge costs incurred by the husband here. It is, after all she, who has suffered a down turn in the maintenance, based not on any decrease in her family budget, but upon other factors, such as a greater degree of shared care of the children shared by the husband and the existence of the husband's second family. 21. I can point to no specific Jersey authority on this except what the Bailiff said in the case of J v H

[2004] JRC081: "It is true that in applications before the Family Division the ordinary rule that costs follow the event is applied more liberally. The husband has however been unsuccessful in his appeal from the decision of the Family Registrar, and but for two factors, I would have ordered that he should pay the costs of the wife. Those two factors are that the issues before this Court raised on the appeal were closely balanced issues and it is not possible to say that the appeal was without any merit. Secondly the result of the Court's decision is, as the husband's counsel has rightly said, that the husband will now have to consider very carefully liquidating his available assets in order to give effect to the Consent Order made in 2000. I do not think that I should make his task any more difficult in that respect and I accordingly make no order as to costs." 22. In making a comparison with this case, there was indeed merit on both sides of the argument. Secondly, quite apart from the merits of the case, a costs order would be an unreasonable burden for either of these parties to bear. Authorities J v H

[2004] JRC081. Page Last Updated: 27 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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